

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office

March 12, 1997 LB 422

or where murder was preceded by acts performed for the satisfaction of inflicting either mental or physical pain, or that pain existed for any prolonged period of time." This following language that I'm going to read is why this amendment that I'm offering should be accepted. Continuing with the annotation, "In order for aggravating circumstance (1)(d) to be present, the method of killing must entail something more than the ordinary circumstances which attend any death dealing violence." This limiting construction of (1)(d) saves it from violating the U.S. Constitution. This construction that the Nebraska Supreme Court had to put on this subsection (1)(d) was necessary because federal courts had ruled that it's too vague, ambiguous, and could not properly be applied. So because the actual language of the law is inappropriate, the Nebraska Supreme Court said, we're going to narrow the application of these words, we're going to say the circumstances under which this particular subsection (1)(d) will apply. And had the Supreme Court not made this narrowing decision, subsection (1)(d) would have been stricken down entirely in the federal courts as violating the U.S. Constitution. Whenever a criminal law is enacted, even when it's not dealing with death, it has to be precise and exact. A person must be able to go to that law and understand, by reading its words and giving them an ordinary meaning, what conduct is prohibited meaning what conduct, if engaged in, will result in punishment at the hands of the state. If a person can read the language of a criminal statute, a person deemed to have ordinary intelligence, and not be sure what conduct is allowed and what conduct is prohibited, a provision of that kind is ruled by the courts to be unconstitutionally vague. You cannot punish somebody for conduct when they are not able to determine, by reading the words of the law, what conduct is prohibited. In subsection (1)(d) we're talking about a provision that will enhance the seriousness of a murder and thereby subject a person...

SENATOR CROSBY: One minute.

SENATOR CHAMBERS: ...to the death penalty. I've spoken nine minutes already? Okay, I won't object to that, but it just seems like time is flying this morning, something like if you're sitting on death row and the state is waiting to take your life.